

Decision on Authority Initiated Amendments

Priority Restoration Register

- EDL1 (Electricity Networks Corporation (t/a Western Power))
- EDL2 (BHP Billiton Nickel West Pty Ltd)
- EDL3 (TEC Desert Pty Ltd & TEC Desert No. 2 Pty Ltd (t/a Southern Cross Energy Partnership))
- EDL4 (Newmont Power Pty Ltd)
- EIRL1 (EDL NGD (WA) Pty Ltd)
- EIRL2 (Regional Power Corporation (t/a Horizon Power))
- EIRL3 (Rottnest Island Authority)
- EIRL4 (Western Energy Pty Ltd, Pacific Hydro Group Two Pty Ltd & Energis Australia Pty Ltd (t/a Ord Hydro))

1 January 2013

Economic Regulation Authority

WESTERN AUSTRALIA

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DECISION

1. In accordance with section 22 of the *Electricity Industry Act 2004* (**Electricity Act**), the Economic Regulation Authority (**Authority**) has amended the following licences:
 - EDL1 (Electricity Networks Corporation (t/a **Western Power**));
 - EDL2 (BHP Billiton Nickel West Pty Ltd);
 - EDL3 (TEC Desert Pty Ltd & TEC Desert No. 2 Pty Ltd (t/a Southern Cross Energy Partnership) (**Southern Cross Energy**));
 - EDL4 (Newmont Power Pty Ltd);
 - EIRL1 (EDL NGD (WA) Pty Ltd);
 - EIRL2 (the Regional Power Corporation (t/a **Horizon Power**));
 - EIRL3 (the Rottnest Island Authority); and
 - EIRL4 (Western Energy Pty Limited, Pacific Hydro Group Two Pty Ltd & Energis Australia Pty Ltd (t/a **Ord Hydro**)).
2. The licences have been amended to:
 - include a requirement to create and maintain a priority restoration register in accordance with the Authority's decision on the *New Code of Conduct for the Supply of Electricity to Small Use Customers*, published on 22 July 2012; and
 - implement a number of minor amendments of a structural and typographical nature to better implement the *Electricity Licence Review 2010 – Final Decision* and published in the *Electricity Licence Review 2010 – Final Report* on 2 December 2010.
3. As required by section 23(1) of the Act, the Authority will publish a notice of the amendments in the *Government Gazette* as soon as is practicable.

REASONS

4. Pursuant to the Electricity Act, the *Code of Conduct for the Supply of Electricity to Small Use Customers* (**Code**) is reviewed every two years by the Electricity Code Consultative Committee (**ECCC**). In May 2012, the ECCC completed its third review of the Code and provided its Final Review Report to the Authority.
5. In its Final Review Report, the ECCC made a recommendation to move the requirement for a distributor to create and maintain a priority restoration register from the Code and into electricity licences (**Recommendation 29**). This recommendation was based on the following rationale:

The Code only relates to small use customers and a Priority Restoration Register is likely to deal with all customers (not just small use). In the circumstances, there is an argument that provisions for a Priority Restoration Register should be deleted from the Code. There is also, however, a concern that distributors will not create and maintain a Priority Restoration Register if they are not required to.

The ECCC agreed that it should propose that the Authority leave the provisions as they are at the moment and recommend that the Authority consider moving the requirement to the distribution and integrated regional licences when the electricity licences are next reviewed.

Moving the requirement to the licence would ensure that it applies to all customers and not just small use customers.

6. Subsequently, the Authority released its Draft Decision on its proposed amendments to the Code on 1 May 2012, which included the acceptance of Recommendation 29.
7. The ECCC sought public comment on the Authority's proposed amendments and after considering the public submissions received, provided its [Final Advice](#) to the Authority on 11 July 2012.
8. Following consideration of the ECCC's Final Advice, the Authority released its Final Decision on 19 July 2012 to approve the new *Code of Conduct for the Supply of Electricity to Small Use Customers 2012 (2012 Code)*. The 2012 Code was gazetted on 9 November 2012 and will come into effect 1 January 2013, and does not contain a requirement for distributors to create and maintain a priority restoration register.
9. Further details about the ECCC review of the Code and the Authority's draft and final decisions can be found on the Authority's [website](#).
10. In its review of the affected licences, the Authority identified and rectified some minor structural and typographical errors in electricity distribution licences (EDLs) and electricity integrated regional licences (EIRLs) to better implement the Authority's *Electricity Licence Review 2010 – Final Decision* (2 December 2010). These were:
 - clarify that the EIRLs are to cover only the activities that the licensee had applied for and the Authority had approved (i.e. one or more of the following: generation, transmission, retail, distribution);
 - transfer certain definitions from clause 1 into the individual clauses they relate to in the EIRLs (clause 20 and onwards);
 - mark clauses that are not applicable to licences as 'NOT USED' to maintain consistent numbering across all electricity licences;
 - include a definition of "customer" that was erroneously omitted from the EDLs;
 - correct the reference to section 90 instead of section 47 of the Electricity Act in the definition of "small use customer" in relation to an approved scheme (EDLs clause 1.1 and EIRLs clause 21.2(b)); and
 - correct minor typographical errors.
11. The Authority's *Public Consultation Guidelines - For Electricity, Gas & Water Licences and Electricity & Gas Standard Form Contracts* (July 2006) provides that if, in the Authority's view, an amendment to a licence is minor, subject to its legislative obligations, the Authority will not generally engage in public consultation. In the light of the extensive public consultation process leading up to the Authority's Final Decision on the review of the Code, the Authority has not undertaken additional public consultation.

12. In accordance with clause 11 of the licences, the Authority wrote to all affected licensees advising them of its intent to amend the relevant licences by substitution. All licensees were given 15 business days to make submissions on the proposed amendments. The Authority received five submissions from the following licensees:

- Ord Hydro;
- Horizon Power;
- Rottneest Island Authority;
- Western Power; and
- Southern Cross Energy.

Ord Hydro, Horizon Power and the Rottneest Island Authority supported the amendments. Western Power and Southern Cross Energy supported the restructure of the licence but objected to the inclusion of clause 29 (the priority restoration register). The submissions can be found on the Authority's [website](#).

13. Southern Cross Energy submitted that:

SCE considers that there are circumstances where the introduction of clause 29 as proposed would add an administrative burden to develop and maintain for some licensees and would provide little benefit to customers. ...

SCE considers that an issue arises when administering a limited number of customers and in cases where the distribution network supplies only industrial loads. In the case where the distribution network supplies industrial loads, the various customers will have elements of their operations embedded at similar points on the network, that is a customer will in some circumstances have load elements of equal priority and in some cases the load elements will have different priority. In terms of restoration priority the loads of the customers will be distinguishable from an electrical perspective in some cases, but not in others. The actual restoration priority will be more related to the priority of the load than that of the customer as a whole.

... [T]he operational circumstances surrounding such a disruption will required a fluid restoration response and not one that can be managed to a priority restoration register. It will depend on where the disruption occurs and what generation elements are available throughout the course of restoration.

Other than being technically difficult, and potentially impossible to comply with in all cases, the requirement to develop and maintain a priority restoration register for a limited number of customers becomes administratively burdensome. For example, should the licensee only have one customer, this register would only have one name, and where a licensee only has 2 customers the register would only have two names etc. Developing, maintaining and ensuring ongoing compliance adds an additional administrative and cost element onto the business for little or no benefit to the end use customer.

[T]he definition of customer as stated in the Electricity Industry Act 2004 reads as "a person to whom electricity is sold for the purpose of consumption". Clause 29.2 and clause 29.4(d) refers to "all customers" and "a customer" respectively. For clarity and unless intended otherwise, the word customer in these clauses should refer to the defined term customer.

14. Western Power submitted that:

The proposed Priority Restoration Register obligations suggest that Western Power will be required to create and maintain a definitive customer restoration list with a specific ranking criteria...

A fixed customer restoration list will be restrictive and inflexible and will not allow for the particular circumstances of the interruption to be considered.

Western Power considers that it would be more beneficial to require Western Power to create and maintain guidelines which detail the priority of considerations when planning restoration work following an unplanned interruption (which is the approach currently taken by Western Power in relation to this issue). ...

The proposed Priority Restoration Register obligation relates to the restoration of customers. The term customer is defined in accordance with the definition set out in section 3 of the *Electricity Act 2004 (WA)*. Western Power considers that an obligation in relation to prioritising work following an interruption should not be limited to customers but should apply to the entire network. For example, a situation where a fallen power line is a public safety issue but does not affect any customers would not be covered by the obligation.

15. The Authority has considered all submissions in full and given particular attention to the issues raised by Southern Cross Energy and Western Power. In considering the issues raised by Southern Cross Energy and Western Power the Authority makes a number of observations.
16. In terms of the existing requirements for a priority restoration register, these requirements have applied to all distributors, including Western Power, that supply small use customers. No substantial issues have been raised in relation to a distributor's ability to comply with the existing requirements for small use customers. Specifically, the Authority is not aware that Western Power has raised issues with the existing requirements to maintain a priority restoration register in relation to small use customers.
17. In terms of the review of the Code, the proposed requirement to create and maintain a priority restoration register in electricity distribution licences as a new clause 29 extends the existing requirement for a priority restoration register to apply, not just to small use customers, but to all customers. The recommendation has been extensively consulted on and the issues raised by the Southern Cross Energy and Western Power have not been identified as issues that should prevent or change the introduction of the obligation to create and maintain a priority restoration register as a licence requirement.
18. The Authority notes that Western Power has been aware of the planned transfer of the priority restoration register for a while. Western Power was a key participant of the review of the Code and formed part of the ECCC that made the recommendation to the Authority. No other parties (including Southern Cross Energy) made submissions during the public consultation process of the review of the Code that gave rise to any substantial issues in relation to Recommendation 29.
19. Further, as noted throughout the review of the Code, while a distributor is required to create and maintain a Priority Restoration Register, which must comply with any criteria determined by the Minister, the Minister has not determined any criteria at this stage.
20. Any distributor will have to prioritise power restoration work following an unplanned interruption and should have existing procedures in place for dealing with this in order to prioritise restoration of loads to customers.

21. For the reasons listed above, the Authority does not agree with the issues raised by Southern Cross Energy and Western Power, and notes specifically:
- While the decision to move the Code requirement for a priority restoration register is not intended to change the nature of the obligation for small customers, or the ability for the Minister to determine specific criteria, the Authority intended it as a light handed mechanism to achieve the benefits a priority restoration register for consumers.
 - The Minister has not detailed any specific criteria, and the Authority has no role in approving the register. In this circumstance, it is the Authority's view that the obligation to create and maintain a priority restoration register allows the affected licensees' discretion about how to apply the expanded obligation. A register can be maintained in a manner that is meaningful and practical to the licensee, and may, where appropriate, include a methodology and rules about what load is prioritised rather than specific customers.
 - The intention of the new clause 29 is to extend the existing requirement to create and maintain a priority restoration register for all customers. The intention of a priority restoration register is not to record all priorities (public safety risks etc.) but in the nature of a code of conduct requirement to enhance protection of all customers (not just small use customers). As such, if an unplanned event does not affect customers it is not intended to be captured in the register. As Western Power notes, public safety needs be considered and Western Power has other requirements and systems in place to deal with this and those are not affected by the licence obligation to create and maintain a priority restoration register.
 - A requirement to create and maintain a formal register will only increase the incentive to formalise distributors existing priority restoration methodologies, which is the intention, while not appearing to impose an undue cost, particularly in circumstances where there are no criteria or, in Southern Cross Energy's case, few customers.
22. The Authority notes that licensees should be aware of the power for the Minister to detail specific criteria with which the licensee has to comply and engage in any future process to establish those criteria.
23. Finally, the Authority notes that subject to specific criteria being made for a priority restoration register any exemption applications for the requirement to maintain a priority exemption register will be dealt on an individual basis.
24. In relation to the definition of "customer" the Authority notes that under general interpretation principles, the plural of a word has the same meaning as the word itself. However, the Authority agrees with Southern Cross Energy that for clarity, the word "customer" in the final version of the licence should be italicised as a defined term.
25. Section 9(1) of the Electricity Act states that the Authority must not exercise a power conferred by Part 2, Division 3 of the Electricity Act unless the Authority is satisfied that it would not be contrary to the public interest to do so.
26. Section 9(2) of the Electricity Act provides that, when determining whether the exercise of the power would not be contrary to the public interest, the Authority must, without limiting the other matters that may be taken into account, take into account the matters referred to in section 8(5) of the Electricity Act.

27. The Authority has not found any evidence that the proposed amendments would be contrary to the public interest. Accordingly, the Authority has decided to amend the licences listed in paragraph 1 of this decision to:

- implement a number of minor amendments summarised in paragraph 10 of this decision; and
- include the obligation on distributors to create and maintain a priority restoration register as a new clause 29:

29 Priority Restoration Register

29.1 The *licensee* must create and maintain a *priority registration register*.

29.2 The *priority restoration register* must relate to all *customers* of the licensee including but not limited to *small use customers*.

29.3 The *priority registration register* must comply with any criteria determined by the Minister.

29.4 In this clause:

- (a) ***priority restoration register*** means a register that determines the order of restoration of power in the event of an unplanned *interruption*.
- (b) ***interruption*** means the temporary unavailability of supply from the distribution network to a customer but does not include disconnection.